Supreme Court, U.S.
FILED

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CASE NO. 941409 DEC 12 1994

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER 1994 TERM

TIMOTHY D. SUMMERS PETITIONER

VS.

MICHAEL GRIFFITH RESPONDENT

* *

PETITION FOR WRIT OF CERTIORARI

FROM THE

ARKANSAS SUPREME COURT

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether A.C.A. 9-9-216 violates the Due Process Clause of the Fourteenth Amendment to the U. S. Constitution by stating that no adoption decree can ever be challenged for any reason after one year.

2. Whether petitioner's due process rights were violated because (1) the probate court did not have jurisdiction to enter a decree of adoption, (2) respondent presented fraudulent testimony in order to obtain the adoption, (3) petitioner was under a legal infirmity such that he was unable to perfect an appeal within one year after the entry of the adoption decree, and (4) A.C.A. 9-9-216 barred petitioner from attacking the adoption after one year for any reason.

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APPLICABLE STATUTES AND RULES

RULE	PAGE
A.C.A.9-9-206	App. 10-11
A.C.A.9-9-207	App. 12-13
A.C.A.9-9-216	App. 14
ARCP60	App. 15-16
ARCP17	App. 17

JURISDICTIONAL STATEMENT

The Grant County Probate Court entered a decree of adoption, over the objection of petitioner, which allowed his daughter to be adopted by her stepfather. Petitioner's consent was required pursuant to A.C.A. 9-9-206(a)(2). (App. 38-39) The Court lacked jurisdiction to enter a decree of adoption because because the statutory provisions of A.C.A. 9-9-207(a)(2), [(App. 40-41)], for terminating a father's parental rights were not followed and Respondent presented fraudulent testimony in order to obtain the adoption. Due to his incarceration, petitioner was unable to perfect an appeal within the one-year statute of limitation stated in A.C.A. 9-9-216. (App. 42). In promulgating Rule 17 of the Arkansas Rules of Civil Procedure (App. 45), the Arkansas Legislature recognized prisoners and infants as having a legal infirmity. Additionally, Rule 60 of the Arkansas Rules of Civil Procedure (App. 43-44) provide that a decree may be set aside at any time for fraud practiced on the Court by

the successful party. Rule 60 also allows infants to set orders aside within one year after they shed their legal infirmity.

The Arkansas Supreme Court affirmed the lower Court and held that petitioner was procedurally barred from attacking the adoption decree pursuant to A.C.A. 9-9-216. (App. 42) Petitioner contends that he is entitled to substantial protection of his parental rights and that A.C.A. 9-9-216 violates the Due Process Clause of the Fourteenth Amendment of the U. S. Constitution by stating that an adoption decree cannot be attacked for any reason after a period of one year.

STATEMENT OF THE CASE

Petitioner and Kristy (Summers) Griffith were married on December 18, 1982, in Sheridan, Arkansas. On April 29, 1985, their daughter, Tiffany Michelle Summers, was born. The couple separated on or about April 4, 1986, and a final decree of divorce was entered June 23, 1986, in Pulaski County Chancery Court. Custody of the child was awarded to Kristy (Summers) Griffith. Petitioner was awarded reasonable visitation and was ordered to pay $33.00 per week child support.

On September 8, 1986, petitioner was arrested and sent to jail for robbery for forcing payment of a debt owed him. Between June 23, 1986, and September 8, 1986, petitioner exercised his right to visitation with the child on six different occasions. Also, during that time, petitioner signed over his half of the parties' income tax refund, which was between $600.00 and $800.00, to Kristy (Summers) Griffith for the care of their child. While in jail, petitioner sent four money orders to where he thought his daughter

was residing.

Kristy (Summers) Griffith married respondent on October 3, 1986, less than one month after petitioner was jailed. Petitioner never heard anything from Kristy Griffith until she wrote to him in prison asking for his consent for respondent to adopt Tiffany, which was approximately June 10, 1987. Petitioner refused to give his consent. Respondent filed a petition for adoption on March 30, 1988. Appellant filed his objection to the adoption on April 19, 1988, through his parent's attorney. The hearing on the matter was held July 6, 1988, in Grant County Probate Court.

The Honorable Robert Garrett, Grant County Probate Judge, found that appellant's consent was not necessary and that it was in the best interests of the child to grant the adoption. A final decree of adoption was entered August 17, 1988. Petitioner advised his parents' attorney of his desire to appeal this decision but notice of appeal was never filed.

Immediately upon petitioner's release

from prison, he moved to set aside the adoption decree, alleging fraud on the part of Kristy Griffith and violation of his due process rights. On March 17, 1993, a hearing was held in which the Court dismissed petitioner's motion. An order was entered on June 30, 1993, whereby the Court based its decision to dismiss petitioner's motion because it was not brought within the one-year statute of limitation for contesting adoptions and that any remedy appellant had under Rule 60 of the Arkansas Rules of Civil Procedure had expired.

Petitioner filed notice of appeal on July 29, 1993. In his brief to the Arkansas Supreme Court, he alleged that A.C.A. 9-9-216, which imposes a one-year statute of limitation on challenging adoptions, violates the due process clause of the Fourteenth Amendment to the U. S. Constitution.

OPINION BELOW

The Arkansas Supreme Court affirmed the lower court decision in an opinion delivered June 27, 1994, a copy of which is included in

the appendix. The Court, in its opinion, would not address any of petitioner's points of appeal but simply stated that petitioner was procedurally barred by A.C.A. 9-9-216. The Court did state that petitioner failed to allege fraud, which was not an accurate statement. Petitioner filed a petition for rehearing which was denied by the Arkansas Supreme Court on September 12, 1994. Petitioner now respectfully requests a Writ of Certiorari from the United States Supreme Court.

REASONS FOR GRANTING THE WRIT

Petitioner is a divorced father whose daughter was permitted by the Grant County Probate Court to be adopted by her stepfather, the respondent in this case.

According to A.C.A. 9-9-206, if a father of a child was married to the mother at the time the minor was conceived, his consent to any adoption of that child is necessary. Under A.C.A. 9-9-207, his consent may not be necessary if he failed significantly without justifiable cause to communicate with the child or to provide care and support for the child for a period of at least one year.

Judge Robert Garrett, the probate judge in this case, based his decision on the period of time between June, 1986, and September, 1986, which is clearly against the statutory requirements set forth in A.C.A. 9-9-207. (App. 1-3) The judge stated that petitioner failed to visit with the child or pay any support during that three-month period. This finding is based upon fraudulent testimony presented by

respondent. Petitioner did, in fact, visit with the child six times during that three-month period. Petitioner also paid the child's mother between $600.00 and $800.00 during that time. Judge Garrett did not hold petitioner responsible for paying child support during his incarceration. The child ranged from one and one-half years of age to three years of age during this time. Judge Garrett stated that petitioner could have written to his daughter or sent cards. Uncontroverted testimony revealed that petitioner had sent presents to the child through his parents and that the child's mother had denied requests from petitioner to allow petitioner's parents to bring the child to the prison unit to visit.

The standard in terminating parental rights is by clear and convincing evidence. In Santosky v. Kramer, 455 U.S. 745, 102 S.Ct. 1388 (1982), the Court ruled that persons who are facing having their parental rights terminated have a critical need for procedural protection and that there is a fundamental

liberty interest in the care, custody, and management of one's own child which does not evaporate simply because he or she has not been a model parent.

Petitioner is a divorced father, not merely a biological father, and the "best interests of the child" standard used by Judge Garrett violates due process requirements when applied to divorced fathers. Quilloin v. Walcott, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978). This Court has long recognized that parents have a substantial liberty interest in their relationships with their children. Stanley v. Illinois, 405 U.S. 645, 92 S.Ct. 1208 (1972). Caban v. Mohammed, 441 U.S. 380, 99 S.Ct. 1760 (1979). The common thread that runs through these cases is the extent to which the father has accepted responsibility for the child. In Lehr v. Robertson, this Court held that the protection afforded is "linked to the measure of responsibility he has accepted in rearing the child", divorced fathers of legitimate children being entitled to the most

protection. In the case at bar, petitioner sent the child what little money he had even while incarcerated. He sent the child Christmas and birthday pressents through his parents, even after the adoption decree had been entered.

The Arkansas Supreme Court ruled in McKinney v. Ivey, 287 Ark. 300, 698 S.W.2d 506 (1985), that due process would be violated if it was held that no adoption decree could ever be questioned for any reason after one year, as is mandated by A.C.A. 9-9-216. The Court cited Armstrong v. Manzo, 380 U.S. 545, 85 S.Ct. 1187(1965), in allowing an adoption to be attacked more than one year after it was entered. In Armstrong, this Court held that failure to give an unwed biological father notice of adoption proceedings violated "the most rudimentary demands of due process" and rendered the adoption decree constitutionally void.

In the case at bar, Petitioner's due process rights were violated for three reasons: (1) the probate court did not have jursidiction to enter an adoption decree because the probate

judge based his decision upon something less than the requirements of the statute, (2) respondent presented fraudulent testimony in order to obtain the adoption decree, and (3) petitioner was under a legal infirmity such that he was unable to perfect an appeal within one year after the entry of the decree. To allow A.C.A. 9-9-216 to bar any attack for any reason after one year, even for lack of jursidiction, fraud, or legal infirmity, violates the Due Process Clause of the Fourteenth Amendment and should be declared unconstitutional.

For the reasons herein stated, Petitioner respectfully requests that his Petition for a Writ of Certiorari be granted.

JOHN I. PURTLE
ATTORNEY FOR PETITIONER

APPENDIX

SUPREME COURT OF ARKANSAS

NO. 93-1282
(Appeal from Grant County Probate Court)
(No. P-88-8-1)

Opinion delivered June 27, 1994

TIMOTHY D. SUMMERS,
APPELLANT,

V.

MICHAEL GRIFFITH,
APPELLEE.

STEELE HAYS, Associate Justice

This appeal challenges a decree of adoption granted four years earlier. Timothy Summers, appellant, married Kristy Griffith in December, 1982, and a daughter was born April, 1985. Timothy and Kristy were divorced in June, 1986. Kristy was awarded custody with reasonable visitation rights granted to Timothy. In September, 1986, Timothy was convicted of robbery and sentenced to five years imprisonment. Kristy married Michael Griffith, appellee, in October, 1986.

While Timothy was still incarcerated Michael Griffith filed for adoption of the

minor child and Timothy objected. A hearing was held in July, 1988. Timothy testified at the hearing in opposition to the adoption. On August 17, 1988, a decree was entered granting Michael's request for adoption. No appeal was taken.

After his release from prison in October, 1992, Timothy filed a motion to set aside the 1988 adoption. A hearing on the motion was held on March 17, 1993. The trial court denied the motion and appellant brings this appeal, asserting that the court granting the adoption did not have jurisdiction, the decree was obtained by fraud, and the appellant was in prison and under a legal disability during the time for appeal.

In denying appellant's motion, the trial court relied on Ark. Code Ann. 9-9-216 (1987):

"(a) An appeal from any final order or decree rendered under this subchapter may be taken in the manner and time provided for appeal from a judgment in a civil action.

(b) Subject to the disposition of an

appeal, upon the expiration of one (1) year after an adoption decree is issued, the decree cannot be questioned by any person including the petitioner, in any manner upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter unless, in the case of the adoption of a minor, the petitioner has not taken custody of the minor or, in the case of the adoption of an adult, the adult had no knowledge of the decree within the one-year period."

Appellant argues the trial court failed to make the required findings in the original order for adoption and therefore had no subject matter jurisdiction to grant a decree of adoption.

We need not address the arguments raised on appeal. Timothy D. Summers has no standing to set aside the adoption decree and is procedurally barred to proceed in this matter under both Ark. Code Ann. 9-9-216 (Repl. 1993)

and ARCP 60(c)(4). Michael Griffith filed a petition for the adoption of Tiffany Summers on March 30, 1988, and Mr. Summers received notice of Griffith's petition. Summers then filed a formal objection, attended a hearing on the adoption petition, but failed to appeal from the adoption decree which was entered on August 17, 1988. In fact, he waited until October 8, 1992, or more than four years, to file his motion to set aside the decree.

Indisputably, the probate court in this matter had subject matter jurisdiction to enter the adoption decree. In addition, Summers did not allege that extrinsic fraud occurred which is required in these circumstances in order to vacate or modify a decree which had been entered for more than ninety days. Rule 60(c)(4). Applying 9-9-216, Summers was also barred since that statute provides an adoption decree cannot be questioned by any person in any manner upon any ground after the decree has been issued for more than one year.

AFFIRMED.

Office of the Chancellor
Seventh Judicial District of Arkansas

July 14, 1988

Mr. J. Larry Allen
Attorney at Law
201 North Oak Street
Sheridan, AR 72150

RE: In the Matter of the Adoption of Tiffany Michelle Griffith, Grant County Probate No. P-88-8

Dear Mr. Allen:

Prior to deciding this case, I reviewed all cases Mr. Price and Mr. Allen asked me to review. I have also done some independent research into this matter.

The key to this case is whether the natural father's consent can be waived under Ark. Stat. Ann. 9-9-207(a)(2). Bemis v. Hare, 718 S.W.2d 481, 19 Ark. App. 198(1986), defined "failed significantly" as not meaning failed totally but the failure must be a significant one as contrasted with an insignificant one. It denotes a failure that is meaningful or important. The same case defines "justifiable

cause" as meaning that significant failure must be willful in the sense of being voluntary and intentional; it must appear that the parent acted arbitrarily and without just cause or adequate excuse. The party seeking to adopt without the consent of the natural parent must prove his case by clear and convincing evidence.

I placed a great deal of weight upon evidence concerning Mr. Summers' conduct between the date of his and Ms. Griffith's divorce, June, 1986, and the date of Mr. Summers' going to jail in September, 1986. There was no evidence of any restrictions on Mr. Summers' freedom during that period. However, there is evidence that he failed to pay any support and failed to visit his child during this period.

I realize that after Mr. Summers' went to jail, his ability to support and communicate with his child have been restricted. However, even with these restrictions, he could have attempted to send a birthday or Christmas card to his daughter. He did not even attempt to do so. Ms.

Griffith, the child's mother, stated that if she had received any mail from Mr. Summers for the child she would have read it to the child and attempted to explain to her who it was from and what it was. I believe her. Her conduct in the past of picking up presents for Mr. Summers' mother and meeting them at the Pines Mall in Pine Bluff supports her statement.

I do find that by committing a Class Y felony, Mr. Summers showed a serious disregard for his daughter.

I do not hold Mr. Summers responsible for not paying child support during the period he was in jail. However, as the Court stated in Titsworth, 669 S.W.2d 8, 11 Ark. App. 197 (1984), "the father's...criminal acts and the course of conduct followed thereafter indicate a conscious disregard of the children and an indifference to their welfare tantamount to voluntary abandonment."

Mr. Summers' consent is not necessary under Ark. Stat. Ann. 9-9-207 (a)(2). As the Court stated in Bemis v. Hare, "The obvious purpose

of the applicable statute is to provide a child with a real father instead of one who, by his conduct, has proven to be a father by blood only. Although the legislature cannot foresee a man to be a father within the proper meaning of that term, it can and has afforded a judicial method whereby a child may have an opportunity to experience the benefits of having a real father by adoption. Our statute permits the Courts, where the proper circumstances present themselves, to grant a petition for adoption to petitioners who demonstrate true love, affection, and care for a child, regardless of the arbitrary dissent by a natural father."

The petition of Michael Paul Griffith to adopt Tiffany Michelle Summers will be granted.

Mr. Allen will prepare the Decree, present it to Mr. Price for his approval as to form and submit it to me for my signature.

Sincerely,

s/Robert W. Garrett
Chancellor

IN THE PROBATE COURT OF GRANT COUNTY, ARKANSAS

IN THE MATTER OF THE ADOPTION OF
TIFFANY MICHELLE GRIFFITH, a minor.

NO. P-88-8

FINAL DECREE OF ADOPTION

That a hearing was held on the 6th day of July, 1988, and after testimony the court doth find:

That the child herein has lived with the Petitioners for more than six months; that the consent of parent as requested by law is not necessary; and that it would be in the best interest of said child that the adoption be granted.

IT IS THEREFORE, ORDERED AND ADJUDGED that the child named in the Petition as Tiffany Michelle Summers, be and by this decree has become for all legal purposes the child of the petitioner; that the name of said child shall be Tiffany Michelle Griffith; that the name of the petitioner, Michael Paul Griffith shall be shown on the birth certificate as the father instead of the natural father; and that the

child herein has lived with the petitioner for more than six months prior to the filing of the Adoption Petition herein.

IT IS SO ORDERED this 17 day of Aug, 1988.

s/Robert W. Garrett
Probate Judge

s/J. Larry Allen
Attorney for Petitioner

s/Dale Price
Attorney for Timothy Dale Summers

IN THE PROBATE COURT OF GRANT COUNTY, ARKANSAS

IN THE MATTER OF THE ADOPTION OF
TIFFANY MICHELLE GRIFFITH, a minor

ORDER

That a hearing was held on March 17, 1993, and after testimony was proffered, the Court doth find:

1. That the Motion of Movant, Timothy Dale Summers, to set aside the adoption decree is hereby dismissed. That specifically, A.C.A. 9-9-216 disallows any adoption decree to be amended to vacated after a period of one year. That the adoption decree was entered herein on August 17, 1988.

2. Further, the statute of limitations of Rule 60 of the Arkansas Rules of Civil Procedure have expired for movant to request a new trial.

IT IS THEREFORE ORDERED that Movant's Motion to Set Aside Adoption Decree is hereby dismissed with prejudice.

s/Robert W. Garrett

s/J. Larry Allen
s/John I. Purtle

Office of the Clerk
Supreme Court of the State of Arkansas

September 12, 1994

Tona M. DeMers
Attorney at Law
600 Pine Forest Dr., Suite 202
Maumelle, AR 72113

RE: 93 01282 TIMOTHY D. SUMMERS V.
MICHAEL GRIFFITH

Dear Ms. DeMers:

The Arkansas Supreme Court made the following order today in the above styled case:

"Petition for rehearing is denied."

Sincerely,
s/Leslie W. Steen, Clerk

9-9-206. Persons required to consent to adoption - Consideration for relinquishing minor for adoption.

(a) Unless consent is not required under 9-9-207, a petition to adopt a minor may be granted only if written consent to a particular adoption has been executed by:

(1) the mother of the minor;

(2) the father of the minor if the father was married to the mother at the time the minor was conceived or at any time thereafter, the minor is his by adoption, he has custody of the minor at the time the petition is filed, or he has otherwise legitimated the minor according tothe laws of the place in which the adoption proceeding is brought;

(3) Any person lawfully entitled to custody of the minor or empowered to consent;

(4) The court having jurisdiction to determine custody of the minor if the legal guardian or custodian of the person of the minor is not empowered to consent to the

adoption;

(5) The minor, if more than ten (10) years of age, unless the court in the best interest of the minor dispenses with the minor's consent; and

(6) The spouse of the minor to be adopted.

(b) A petition to adopt an adult may be granted only if written consent to adoption has been executed by the adult and the adult's spouse.

(c) Under no circumstances may a parent or guardian of a minor receive a fee, compensation, or any other thing of value as a consideration for the relinquishment of a minor for adoption. However, incidental costs for prenatal, delivery, and postnatal care may be assessed, including reasonable housing costs, food, clothing, general maintenance, and medical expenses, if they are reimbursements for expenses incurred or fees for services rendered. Any parent or guardian who unlawfully accepts compensation or any other thing of

value as a consideration for the relinquishment of a minor shall be guilty of a Class C felony.

9-9-207. Persons as to whom consent not required.

(a) Consent to adoption is not required of:

(1) a parent who has deserted a child without affording means of identification or who has abandoned a child;

(2) a parent of a child in the custody of another, if the parent for a period of at least one (1) year has failed significantly without justifiable cause (i) to communicate with the child or (ii) to provide for the care and support of the child as required by law or judicial decree;

(3) The father of a minor if the father's consent is not required by 9-9-206(a)(2);

(4) a parent who has relinquished his right to consent under 9-9-220;

(5) a parent whose parental rights have been terminated by order of court under 9-9-220;

(6) a parent judicially declared incompetent or mentally defective if the court

dispenses with the parent's consent;

(7) any parent of the individual to be adopted, if the individual is an adult;

(8) any legal guardian or lawful custodian of the individual to be adopted, other than a parent, who has failed to respond in writing to a request for consent for a period of sixty (60) days or who, after examination of his written reasons for withholding consent, is found by the court to be withholding his consent unreasonably; or

(9) the spouse of the individual to be adopted, if the failure of the spouse to consent to the adoption is excused by the court by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent.

(b) Except as provided in 9-9-212 and 9-9-224, notice of hearing on a petition for adoption need not be given to a person whose consent is not required or to a person whose consent or relinquishment has been filed with the petition.

9-9-216. Appeal from and validation of adoption decree.

(a) An appeal from any final order or decree rendered under this subchapter may be taken in the manner and time provided for appeal from a judgment in a civil action.

(b) Subject tothe disposition of an appeal, upon the expiration of one (1) year after an adoption decree is issued, the decree cannot be questioned by any person including the petitioner, in any manner upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter unless, in the case of the adoption of a minor,the petitioner has not taken custody of the minor or, in the case of the adoption of an adult, the adult had no knowledge of the decree within the one-year period.

RULE 60

RELIEF FROM JUDGMENT, DECREE OR ORDER

(a) Clerical Mistakes...

(b) Ninety-day Limitation. To correct any error or mistake or to prevent the miscarriage of justice, a decree or order of a circuit, chancery or probate court may be modified or set aside on motion of the court or any party, with or without notice to any party, within ninety days of its having been filed with the clerk.

(c) Grounds for Setting Aside Judgment, Other Than Default Judgment, After Ninety Days. The court in which a judgment, other than a default judgment [which may be set aside in accordance with Rule 55(c)] has been rendered or order made shall have the power, after expiration of ninety (90) days after the filing of said judgment withthe clerk of the court, to vacate or modify such judgment or order:

(1) by granting a new trial where the grounds therefor were discovered after the

expiration of ninety (90) days after the filing of the judgment, or, where the ground is newly discovered evidence which the moving party could not have discovered in time to file a motion under Rule 59(c), upon a motion for new trial filed with the clerk of the court not later than one year after the discovery of the grounds or one year after the judgment was filed with the clerk of the court, whichever is earlier; provided, notice of said motion has been served within the time limitations for filing the motion.

(2) by a new trial granted in proceedings against defendants constructively summoned, and who did not appear, upon a motion filed within two years after the filing of the judgment with the clerk of the court, or within one year after a certified copy of the judgment has been served upon the defendant, whichever shall be the earlier, upon ssecurity for costs being given; provided notice of the filing of said motion has been served upon the adverse party within the time limitations for filing

the motion.

(3) for misprisions of the clerk.

(4) for fraud practiced by the successful party in obtaining the judgment.

(5) for erroneous proceedings against an infant or person of unsound mind where the condition of such defendant does not appear in the record, nor the error in the proceedings.

(6) for the death of one of the parties before the judgment in the action.

(7) for errors in a judgment shown by an infant within twelve (12) months after reaching the age of eighteen (18) years, upon a showing of cause.

(d) Valid Defense to Be Shown. No judgment against a defendant, unless it was rendered before the action stood for trial, shall be set aside under this rule unless the defendant in his motion asserts a valid defense to the action and, upon hearing, makes a prima facie showing of such defense.

(e) Valid Cause of Action to Be Shown. No judgment, unless it was rendered before the

action stood for trial, shall be set aside on the motion of the plaintiff unless the plaintiff makes a prima facie showing of a valid cause of action.

(f) Defendant Constructively Summoned - Restoration of Property...

(g) Exception for Divorce Decrees...

RULE 17.

PARTIES PLAINTIFF AND DEFENDANT

(a) Real Party in Interest...

(b) Infants or Incompetent Persons.

Whenever an infant or incompetent person has a guardian, the guardian must sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed guardian, he may sue by his next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent. No judgment shall be rendered against an infant or incompetent until after a defense by a guardian or guardian ad litem, who shall be appointed by the court upon application of any interested party and who shall promptly respond tothe claim against the infant or incompetent as provided by these Rules.

(c) Prisoners. No judgment shall be rendered against a prisoner in the penitentiary until after a defense made for him by his attorney, or, if there is none, by a person appointed by the court to defend for him.